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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 199

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J. H. CRAIN AND R. E. LEE WILSON, JR., TRUSTEES OF
LEE WILSON & COMPANY, A BUSINESS TRUST,

Petitioners,

vs.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF CLAIMS.

GEO. E. H. GOODNER,
Counsel for Petitioners.

SCOTT P. CRAMPTON,
Of Counsel.

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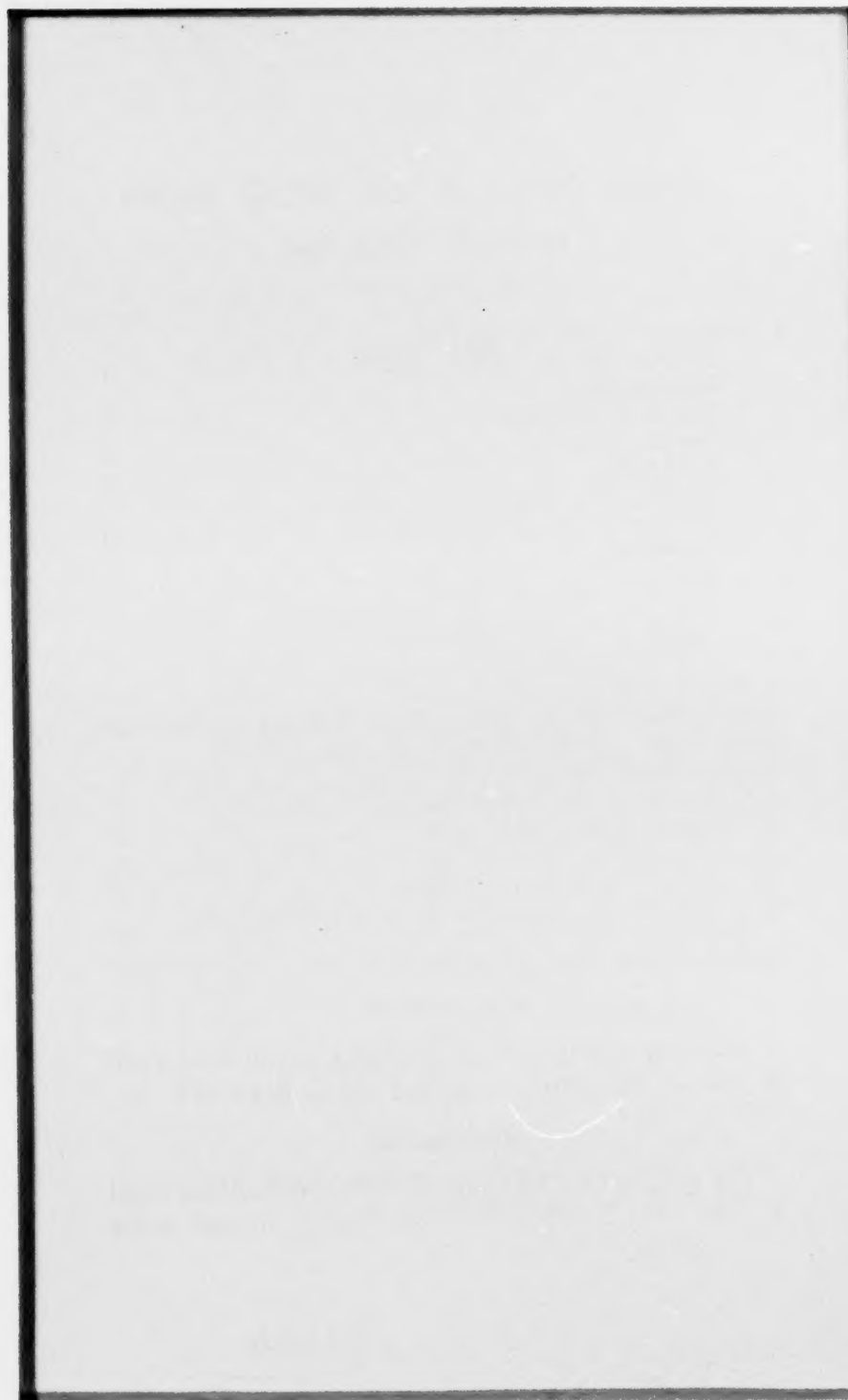
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**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF CLAIMS.**

The petitioners, J. H. Crain and R. E. Lee Wilson, Jr., Trustees of Lee Wilson & Company, a business trust, pray that a writ of certiorari be issued to review the judgment of the Court of Claims entered in the above entitled cause.

Opinion Below.

The opinion of the Court of Claims was entered April 6, 1942 (R. 6), and is reported at 44 F. Supp. 321.

Jurisdiction.

The judgment of the Court of Claims was entered April 6, 1942. The jurisdiction of this Court is invoked under

Section 3(b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

Questions Presented.

1. Did the petition filed in the Court of Claims state a cause of action against the United States and within the jurisdiction of that court?

2. Did the court err in sustaining the demurrer and in refusing petitioners a hearing on the merits?

3. Are petitioners entitled to recover from the United States payments made by them for cotton tax exemption certificates with which to discharge their tax imposed on the ginning of their cotton by the Bankhead Cotton Act of 1934?

Statutes Involved.

The statutes involved are the Bankhead Cotton Act of 1934; the Second Deficiency Appropriation Act, Fiscal Year 1938; and Section 145 of the Judicial Code. The pertinent parts of these statutes are set out in the Appendix, *infra*, pp. 10-18.

Statement.

The Bankhead Cotton Act of 1934 provided that any producer of cotton could market free of tax the amount of cotton produced in the 1934-35 cotton season which did not exceed the allotment made to him by the Secretary of Agriculture, but that any cotton produced in excess of said allotment was subject to a tax of approximately five cents per pound, which tax was payable to the Collector of Internal Revenue in money, or in tax exemption certificates which the farmer might obtain from the Secretary of Agriculture, or his agents, pursuant to his regulations. The Secretary of Agriculture sold the exemption certificates to farmers at four cents per pound. Upon the payment of the

tax either in money or in exemption certificates, the Collector issued bale tags to be attached to the bales of ginned cotton, without which the cotton could not be sold or moved in interstate commerce without subjecting the producer to heavy penalties.

In order to facilitate the issuance of exemption certificates, the Secretary of Agriculture set up a "Pool", with agents thereof in each county, which Pool not only issued the exemption certificates which represented tax free cotton, but also sold certificates to producers who produced more cotton than their allotment. The Pool was supposed to receive the unused exemption certificates from farmers who did not produce their allotted amount of cotton and to sell these to farmers who produced more than their allotments.

Petitioners produced more cotton in the 1934-35 crop year than was allotted to them by the Secretary of Agriculture, thus subjecting themselves to the ginning tax imposed by the Bankhead Act on the excess. They could market that excess cotton, either by paying the Collector of Internal Revenue a tax of not less than five cents per pound, or they could discharge that tax liability by purchasing exemption certificates from the "Pool" at four cents per pound and discharge the tax with those certificates. They chose the lesser of the two evils and purchased from the Pool exemption certificates in the total amount of \$65,923.32 with which they paid the tax on the cotton which they produced in excess of their allotments. Said purchases were paid for by bank drafts made payable to E. L. Deal, Certificate Pool Manager, and were endorsed by him over to the Treasury of the United States and were covered into and deposited in the general fund of the United States (R. 2).

Petitioners duly filed with the Collector of Internal Revenue a claim for refund of the amount paid to the "Pool"

for exemption certificates, but said claim was denied by the Commissioner of Internal Revenue on the ground that the tax was not paid in money (R. 3).

The Second Deficiency Appropriation Act for the Fiscal Year 1938 provided for refund of amounts paid as tax under the Bankhead Cotton Act. Petitioners duly filed a claim under that Act for refund of the amounts paid to the Pool for certificates, with which to pay its tax, but that claim was denied on the ground that the amount claimed did not represent taxes paid (R. 3).

Petitioners made timely written demand upon the Comptroller General of the United States, upon the Secretary of the Treasury, and upon the Secretary of Agriculture for refund of the amount paid for exemption certificates. The Commissioner of Internal Revenue replied to all of said demands that no refund or repayment would be made (R. 3).

Each of the claims filed and the demands made, as well as the petition to the Court of Claims, alleges the unconstitutionality of the Bankhead Cotton Act and the payment under duress and compulsion of \$65,923.32 to the United States for cotton tax exemption certificates (R. 3). The petition to the Court of Claims also alleges that the amount which petitioners paid for cotton tax exemption certificates was money had and received by the United States for the account of petitioners; that said amount is held in trust for petitioners; and that said amount was the private property of petitioners and of said trust and was taken for the public use without just compensation (R. 4).

Respondent demurred to the petition (R. 5). On April 6, 1942, the Court of Claims filed its Opinion in which it sustained the demurrer and dismissed the petition. One Judge dissented. Another Judge concurred on the ground "that no showing has been made to us sufficient to over-

come the presumed constitutionality of the Bankhead Act" (R. 16).

Specification of Errors to be Urged.

The Court of Claims erred:

1. In failing to hold that the Bankhead Cotton Act was unconstitutional, null, and void.

2. In failing to hold that petitioners' payments for cotton tax exemption certificates were made under duress and compulsion when the purchase of said certificates (or the payment of a larger amount of tax) was required by the Bankhead Cotton Act as a condition precedent to the marketing of any cotton produced by petitioners in excess of their allotment under said Act.

3. In failing to hold that respondent was retaining petitioners' payments under a contract implied in fact when said payments were made under such conditions that the parties would expect repayment when the duress of the Bankhead Cotton Act was removed.

4. In refusing to treat as a fact for purposes of the demurrer petitioners' allegation that "the amounts collected from plaintiffs * * * were covered into the general fund of the Treasury of the United States."

5. In sustaining the demurrer and dismissing the petition when the facts alleged in said petition state a good cause of action against the United States and within the jurisdiction of the Court of Claims.

Reasons for Granting the Writ.

1. The decision below, in holding the Bankhead Cotton Act to be constitutional (R. 8-9), is in direct conflict with *Thompson v. Deal*, 92 F. (2d) 478 (C. A. D. C.), and *United*

States v. Moor, 93 F. (2d) 422 (5 C. C. A.), each holding such Act to be unconstitutional.

The decision below is in conflict with *Stahmann v. Vidal*, N. Mex. Dist. Ct., wherein it was held that the ginning tax was paid under duress, thus giving the plaintiff a right of action, and that the Bankhead Cotton Act was unconstitutional, thus giving plaintiff a right of recovery. The U. S. Circuit Court of Appeals, Tenth Circuit, overruled the lower court on the question of the plaintiff's right to maintain the action and refused to pass upon the constitutional question. This Court granted certiorari on the question of the plaintiff's right to maintain the action and in *Stahmann v. Vidal*, 305 U. S. 61, held that the plaintiff could maintain the action, because the tax was paid under duress, and that plaintiff was entitled to recover, obviously, because the law was unconstitutional as held by the trial Court.

The decision of the Court of Claims is in conflict with this Court's decision in *United States v. Butler*, 297 U. S. 1, wherein it was pointed out that Congress,

in the Bankhead Cotton Act, used the taxing power in
a * * * minatory fashion to compel submission

of a minority to a coercive act. This Court designated such legislation as "coercion by economic pressure" to enforce the provisions of the Agriculture Adjustment Act which was in that decision held unconstitutional.

In *United States v. Moor*, *supra*, the Court referred to the repeal of the Bankhead Cotton Act (49 Stat. 1106, 1155) and said:

Congress thereby indicated that the Bankhead Act was so intimately related to the Agricultural Adjustment Act that the two should go down together. The two are parts of one plan. It would certainly not be fair to relieve those who had not paid the tax, and deny

relief to those who had. We are content to hold that the Bankhead Act shares the fate of the Agricultural Adjustment Act.

One of the grounds upon which this Court rested its decision in holding the Agricultural Adjustment Act of 1933 to be unconstitutional was that by Section 12(b) thereof the proceeds derived from taxes imposed by the Act were appropriated for the purpose of carrying out said Act. Section 16(c) of the Bankhead Cotton Act contains the same condemned provision (App. p. 15).

2. The decision of the Court of Claims in holding that the Bankhead Cotton Act exerted no duress or compulsion upon petitioners (R. 14) is in conflict with *Stahmann v. Vidal, supra*, and *Thompson v. Deal, supra*, which held that the provisions of said Act did exert duress and compulsion upon cotton producers. The substance of the reasoning of the Court of Claims on this point was stated as follows:

The man who was a little more fortunate would not mind sharing his good fortune with his less favored neighbor (R. 14).

The Circuit Court of Appeals for the District of Columbia, however, considered the operation of the same statute in *Thompson v. Deal* and concluded:

Here the payment was made under such an urgent necessity as to imply that it was made under compulsion, * * *.

Cf. *United States v. Butler, supra*, pp. 70-71.

3. The holding of the Court of Claims that the allegations in petitioners' petition "are insufficient to establish an obligation on the part of the United States by way of a contract, either express or implied in fact" (R. 15), is in conflict in principle with *United States v. Compagnie Gen-*

erale Transatlantique, 26 F. (2d) 195 (2 C. C. A.), and *Sinclair Nav. Co. v. United States*, 32 F. (2d) 90 (5 C. C. A.); Cf. *Carriso, Inc., v. United States*, 106 F. (2d) 707 (9 C. C. A.), and *Bull v. United States*, 295 U. S. 247. The first three decisions allowed recovery from the United States of amounts paid as fines or fees under unconstitutional or repealed statutes and the last decision allowed recoupment of taxes paid by mistake under conditions which would not in conscience permit their retention.

It is well established that a contract is implied in fact when it is made, as here, under such conditions that the parties would expect repayment when the compulsion for their actions has been removed. The courts have repeatedly held that such payments create a contractual or quasi contractual obligation between the payor and the government.

The payments sought to be recovered herein were made by petitioners under the unconstitutional Bankhead Cotton Act and amounted to approximately forty per cent of the value of their excess production. A tax of forty per cent of the value of property is tantamount to a fine and should be refunded just as are fines collected under unconstitutional statutes.

4. The failure of the court below to give effect to the allegations of petitioners that their payments were covered into the general fund of the Treasury of the United States (R. 13) is contrary to the well established rule that, for purposes of a demurrer, all facts well pleaded must be taken as admitted. Petitioners' allegations go to the manner in which these payments were actually made—not how the law said they should be made (R. 2-3, 4). The Court of Claims in controverting these allegations of fact has established an unhealthy precedent in legal procedure. Furthermore, the court's holding in this respect is in conflict with many

decisions of the Supreme Court such as *Nalle v. Oyster*, 230 U. S. 165, 180, and *Dakin v. Bayly*, 290 U. S. 143, 148.

That the Court of Claims has jurisdiction to hear this case is apparent from the provisions of Section 145 of the Judicial Code (App. p. 17).

That petitioners have stated a good cause of action against the United States appears from the discussion and authorities set out above.

A decision by this Court on the aforementioned legal questions would not only prevent an injustice to petitioners herein, but would also resolve the conflicts between the lower courts and dispose of a question of vital interest to the cotton producers of the country.

Conclusion.

For the foregoing reasons, it is respectfully submitted that the petition should be granted.

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